



Yellowstone County Board of Adjustment Minutes/September 22, 2004

The County Board of Adjustment met on Wednesday, September 22, 2004 in the Small Conference Room, 4th Floor of the Parmly-Billings Library. **Vice-Chair Nienaber** called the meeting to order at 10:00 a.m. **Vice-Chair Nienaber** introduced the board members and staff in attendance.

Name	Title	1/14/04	2/11/04	3/10/04	4/14/04	5/12/04	6/9/04	7/14/04	8/11/04	9/8/04	9/15/04	9/22/04	10/13/04	11/10/04	12/8/04
Gary Weitz	Chairman	Canceled	1	1	1	1*	Canceled	1	Canceled	Canceled	Canceled	1*			
Frank Nienaber	Vice-Chair		1	1	1	1		1				1			
Jerry Ray	Boardmember		1	1	1	1		1				1			
Jim Beitler	Boardmember		1	E	1	E		E				E			
Oscar Heinrich	Boardmember		V	V	V	V		V				1			
Nicole Cromwell	Zoning Coordinator		1	1	-	-		-				1			
Karen Miller	Planning Clerk		1	1	1	1		1				1			
Juliet Spalding	Planner I		-	-	1	1		-							
Wyeth Friday	Planner I		-	-	-	1		-							

*Indicates participation via conference call. Vice-Chairman Nienaber ran the meeting for Chairman Weitz.

Public Comments

There were none.

Approval of Minutes

The minutes of the meeting of July 14, 2004 were not reviewed.

Public Hearings

Vice-Chair Nienaber reviewed the conditions and criteria for granting a variance. **Vice-Chair Nienaber** introduced Variance #244 and said that this was a continued item from the July 14, 2004.

Vice-Chair Nienaber asked Nicole Cromwell, Planner II/Zoning Coordinator for presentation of Variance #244.

Variance #244: (tabled from July 14, 2004)

Ms. Cromwell reviewed staff's recommendation of denial. She explained that the application would have to be removed from the table for discussion. The application was tabled from the July 14, 2004 meeting. She reviewed the staff report for the Board and audience. She explained that the Board had a motion on the table for approval with the condition that construction be completed in one year.

Boardmember Ray made a motion to remove Variance #244 from the table for discussion; it was seconded by Boardmember Heinrich and passed by a 4-0 voice vote.

REQUEST

A variance from Section 27-310(I)(3) to increase the maximum allowed size of a detached accessory structure from 1,500 to 6,250 square feet in a Residential-15,000 zone on Lot 3 of Hobby Subdivision. The subject property is located at 580 Garden Avenue, August and Patty Bentz, owners. The Board of Adjustment determinations for variances are included at the end of the staff report.

APPLICATION DATA

OWNER:	August and Patty Bentz
PURPOSE:	To allow the construction of a detached accessory structure that exceeds 1,500 square feet.
LEGAL DESCRIPTION:	Hobby Subdivision, Lot 3
ADDRESS:	580 Garden Avenue
SIZE OF PARCEL:	8.94 acres
EXISTING LAND USE:	Vacant and pasture land
PROPOSED LAND USE:	A single oversized detached accessory structure
EXISTING ZONING:	Residential-15,000

Discussion:

Chairman Weitz asked the applicant if he would give an overview of the application for the rest of the Board specifically Oscar Heinrich the newest Boardmember as he was not present at the initial hearing.

August Bentz, applicant, reviewed the application and explained the reasons that he needed the variance. He said that he had also received a letter in support from the adjoining property owner at 590 Garden Avenue. He explained that he had followed the procedures according to the information provided by the Planning Department. He stated that none of the neighboring property owners have voiced opposition. The meeting was postponed, because of lack of a quorum on two other occasions. He reiterated that there were no neighbors that were in opposition to the request. He explained that there are other buildings larger than the one he is proposing that exist in the neighborhood. He gave an overview of the reasons that staff was denying the variance. He indicated that there have been no others who have requested this type of variance. There was concern with the indication that he had attempted to follow the correct procedures and has had difficulty processing his application with the current Board postponing the meeting due to lack of quorum.

Mark Parker, applicant's attorney, said he felt that if the purpose of zoning is to keep residential and commercial separate, this building is designed to fit into the neighborhood. He indicated that he did not feel that anyone would be adversely affected by the proposed building on this property.

Mr. Bentz said that the Board indicated at the initial meeting that they had questions on the DEQ information. He had provided that information to staff for distribution and to the Board after that meeting. He said that he was just asking to build the shop he needs to adequately store his possessions. He pointed out that there are other residential dwellings going up in the area. He reviewed photos of existing buildings of similar size and use, noting that these were examples in the vicinity of the subject property that were more than 1500 square feet.

Boardmember Ray asked what the zoning was for each of the example properties that he was referring to.

Mr. Bentz said he did not know the zoning of each of those parcels. He indicated that he felt that he should be granted the variance because there are so many others of similar size and type in the area. He said that there were several different zoning designations in that small area of different properties and that it was difficult for him to determine the exact zoning for each of the properties that he photographed for examples.

Ms. Cromwell left the room to retrieve the Zoning book so that they could determine the different zoning for those properties.

Boardmember Heinrich asked the applicant why he did not apply for a zone change.

Ms. Cromwell returned with the Zoning book.

Mr. Bentz said that his realtor thought that this was the best way. He said that when he came to the Planning office, the Planner he spoke to also indicated that the variance would be the best approach. He said it was not until the first meeting during the public hearing that the Board of Adjustment members questioned the method of a zone change rather than a variance.

Ms. Cromwell said that generally when someone comes in with a request to increase the allowed size of an accessory structure the normal recommendation is to apply for a variance. She said that the procedure includes asking what the proposed size and use of the structure would be. The variance would have been recommended because a zone change would change the use of the property and a variance would not allow changes in the underlying zoning.

Ms. Cromwell reviewed the zoning of the locations in question that the applicant had noted other buildings of similar size.

Mr. Bentz pointed out the areas of the buildings he was referring to on the zoning map book for the Board.

Boardmember Ray pointed out that some of the properties referred to were zoned properly for the type of building that was constructed.

Mr. Bentz said that he understands that there are different zonings in that area but he felt that there are others buildings that have been allowed to be constructed without a variance approval.

Mr. Parker said that once a building is constructed and remains without being cited as noncompliant for one year the statute of limitations allows it to stay.

Mr. Bentz reiterated that he had provided staff with adequate information for the Board to make these determinations at the first meeting.

Boardmember Ray asked if he had the opportunity to do this process over from the beginning, what he would choose to do. He said the intent of the accessory structure restriction was to make sure that there was a residence built prior to the secondary building.

Mr. Bentz said that the purpose of the Board is to review all testimony and make a decision and there was a recommendation prior to the meeting.

Boardmember Ray said the problem that he had with approving this variance was simple. He said if he has property with an R-15,000 he can argue that others were granted in the Heights, an application was granted on Garden for Mr. Bentz, who he understood was the former assistant police chief. He indicated that if they were to leave the zoning as R-15,000 and eliminate the size of the building it would be square across the board.

Mr. Bentz said his former affiliation with police had nothing to do with any application approval or denial. He stated that Boardmember Ray was prejudice against him because he was the former assistant police chief. He said that he felt that Boardmember Ray had been very antagonistic during the first meeting held and is continuing to be during this meeting. He indicated that Boardmember Ray had a similar building on his own property.

Chairman Weitz said he felt that based on the area zoning and what he plans to do with the building it would have been better to proceed with a zone change application. But that is not the case and this board needs to act on this variance request. He said that he felt the applicant had followed appropriate procedure when applying for the variance. He pointed out that the restrictions in place are to preserve the integrity of the property for the surrounding landowners. In this case there are others in the vicinity of similar size and use. There has been no opposition.

Vice-Chair Nienaber said there appears to be some past conflict that is interfering with the applicant and Boardmember Ray.

Boardmember Ray said that had nothing to do with it.

Kevin Bentz, applicant's son, said that his father grew up in that area and wanted to stay in that area. He said the area is not a growing area or a desirable area to live. He felt that if the variance was approved this building would not affect the multitude of different buildings and zonings surrounding it. He commented on the reasons for having the Board of Adjustment and felt that this was to protect the integrity of the neighborhood.

Chairman Weitz said he felt the application did meet the criteria for granting a variance.

Vice-Chair Nienaber said that he felt that times change and neighborhoods use and the use of property changes with time and felt that this would be an acceptable building for the property and the area. He indicated that they still could have applied for a zone change to Ag-Suburban that would have allowed the building without a variance.

Motion

On a motion by Boardmember Heinrich, seconded by Boardmember Nienaber and passed by a 3-0-1 voice vote, with Boardmember Ray refusing to vote, Variance #244 was approved with the following condition:

- 1. The construction will be completed within one year of Board of Adjustment approval.***

Other Business:

Boardmember Heinrich said as a new Boardmember he had been reviewing the bylaws and asked staff why the by laws were titled as “proposed”. He suggested that the bylaws should be updated. He also suggested that the Board discuss and consider a more convenient time for the meetings.

Chairman Weitz said the current time and location better for him and felt that issues of not having a quorum would be resolved now that there is a full Board. He said that the Bylaws should be updated to reflect the final version.

Ms. Cromwell said staff will present an updated version for approval at the next regular scheduled meeting. She said there were no applications received for October, however, if the Board wants to meet to review the bylaws it can be scheduled.

Chairman Weitz said the bylaws could wait for the next meeting when there is an application for review.

Adjournment:

Meeting was adjourned at 10:50 a.m.

Gary Weitz, Chairman

ATTEST:

Karen Miller, Planning Clerk